Supreme Court, U.S.
FILED
MAY 27 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-660

In The

Supreme Court of the United States

October Term, 1985

THE STATE OF COLORADO,
Petitioner,

vs.

FRANCIS BARRY CONNELLY,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

BRIEF AMICUS CURIAE OF THE COALITION FOR THE FUNDAMENTAL RIGHTS AND EQUALITY OF EX-PATIENTS IN SUPPORT OF RESPONDENT

J. Benedict Centifanti, Law Clerk
On the Brief

Chris Ann Schaeffer
P. Susanne Mast
Legal Interns

MICHAEL L. PERLIN *
Director, Federal
Litigation Clinic
New York Law School
57 Worth Street
New York, NY 10013
(212) 431-2183

*Counsel of Record

THE COPY CENTER, INC. 615 Chestnut Street Philadelphia, PA 19106 (215) 928-1900

TABLE OF CONTENTS

Page

I. STATEMENT OF INTEREST OF AMICI CURIAE.....1

II. SUMMARY OF ARGUMENT.....8

III. ARGUMENT.....11

A. Under this Court's Due Process Precedents, the Ex-Patient's Initial Statement, Compelled by His Belief in a Divine Mandate, Must Be Suppressed as Involuntary.....11

1. Our Civilized System of Justice Has Traditionally Recognized Certain Severely Disabling Mental Conditions as Limitations on Voluntary Acts.....11

2. The Ex-Patient's Mental Condition and Hallucinations Clearly Satisfy the Criteria for Suppressing His Initial Statement as Involuntary.....25

B. Under this Court's Miranda Precedents, The Ex-Patient's Mental Condition Nullified the Attempted Miranda Warnings and Waiver.....38

Table of Contents (continued)

1. Under *Miranda* and its Progeny, Certain Severely Disabling Mental Conditions Can Render Warnings and Waivers Ineffective.....38

2. The Ex-Patient's Mental Condition and Hallucinations Rendered His *Miranda* Waiver Ineffective.....50

CONCLUSION.....60

TABLE OF AUTHORITIES

Page

CASES

Addington v. Texas,
441 U.S. 418 (1979).....57

Ake v. Oklahoma,
105 S.Ct. 1087 (1985).....3, 17, 57

Allen v. Illinois, cert.
granted, 54 U.S.L.W. 3328 (U.S.
Nov. 12, 1985) (No. 85-5404).....6

Baxtrom v. Herold,
383 U.S. 107 (1966).....17

Blackburn v. Alabama,
361 U.S. 199 (1960).....passim

Brewer v. Williams,
430 U.S. 387 (1977).....57, 58, 59

Culombe v. Connecticut,
367 U.S. 568 (1961).....12, 14

Dusky v. United States,
362 U.S. 402 (1960).....55

Escobedo v. Illinois,
378 U.S. 478 (1964).....44

Estelle v. Smith,
451 U.S. 454 (1981).....57

Fikes v. Alabama,
352 U.S. 192 (1957).....22

Ford v. Wainwright, cert. granted, 54 U.S.L.W. 3392 (U.S. Nov. 10, 1985) (No. 85-5542).....5, 6, 17, 55

Green v. United States, 355 U.S. 184 (1957).....21

Greenwood v. United States, 350 U.S. 410 (1956).....17

Griswold v. Connecticut, 381 U.S. 479 (1964).....19

Hunter v. People, 655 P.2d 374 (Colo. 1982).....20

Jackson v. Indiana, 406 U.S. 715 (1972).....17

Johnson v. Zerbst, 304 U.S. 458 (1938).....50

Jones v. United States, 103 S.Ct. 3043 (1983).....3, 17

Kremens v. Bartley, 431 U.S. 119 (1977).....3

Kwiatkoski v. People, 706 P.2d 407 (Colo. 1985).....21

Leyra v. Denno, 347 U.S. 556 (1954).....22

Lisenba v. California, 314 U.S. 219 (1941).....19

Maggio v. Fulford, 103 S.Ct. 2261 (1983).....17

McCready v. Blue Shield of Virginia, 457 U.S. 465 (1982).....56

Metropolitan Life Insurance v. Massachusetts, 105 S.Ct. 2380 (1985).....35

Michigan v. Jackson, 54 U.S.L.W. 4334 (U.S. April 1, 1986) (No. 84-1531).....53

Miller v. Fenton, 106 S.Ct. 445 (1985).....18, 25, 44

Mincey v. Arizona, 437 U.S. 385 (1978).....24

Miranda v. Arizona, 384 U.S. 436 (1966).....passim

Moran v. Burbine, 54 U.S.L.W. 4265 (U.S. March 11, 1986) (No. 84-1485).....16, 49

New York v. Quarles, 104 S.Ct. 2626 (1984).....39

North Carolina v. Butler, 441 U.S. 369 (1979).....50

O'Connor v. Donaldson, 422 U.S. 563 (1975).....57

Oregon v. Elstad, 105 S.Ct. 1285 (1985).....38

Parham v. J.R., 442 U.S. 584 (1979).....24, 57

People v. Connelly,
702 P.2d 722 (Colo. 1985).....11, 38

People v. Fish,
660 P.2d 505 (Colo. 1983).....39

People v. Lowe,
200 Colo. 470, 616 P.2d 118
(1980).....39

Powell v. Texas,
392 U.S. 514 (1968).....35

Reck v. Pate,
367 U.S. 433 (1961).....22

Rennie v. Klein,
476 F.Supp. 1294 (D.N.J. 1979)
653 F.2d 836 (3rd Cir. 1981),
vacated, 458 U.S. 1119
(1982), on remand, 720 F.2d
266 (3rd Cir. 1983).....24

Robinson v. California,
370 U.S. 660 (1962).....35

Rogers v. Richmond, 365 U.S.
544 (1961).....19

Simmons v. United States,
390 U.S. 377 (1968).....21

Smith v. Sielaff, cert.
granted, 54 U.S.L.W. 3262
(U.S. Oct. 21, 1985)
(No. 85-5487).....3, 6

Spano v. New York,
360 U.S. 315 (1959).....22

Strickland v. Washington,
104 S.Ct. 2052 (1984)
reh. den. 104 S.Ct. 3562 (1984).....3

Townsend v. Sain,
372 U.S. 293 (1963).....12, 14

United States Department of the
Treasury, Bureau of Alcohol,
Tobacco and Firearms v. Galioto,
prob. juris. noted, 54 U.S.L.W.
3292 (U.S. Nov. 5, 1985)
(No. 84-1904).....3, 5, 6

United States v. Murphy,
763 F.2d 202 (6th Cir. 1985),
cert. denied, 54 U.S.L.W. __,
(U.S. Jan. 13, 1986)
(No. 85-5350).....21

Vitek v. Jones,
445 U.S. 480 (1980).....57

Wainwright v. Greenfield,
106 S.Ct. 634 (1986).....6, 17

Watts v. Indiana,
338 U.S. 49 (1949).....16, 24

CONSTITUTIONAL PROVISIONS

U. S. Const. Amend. XIV.....18

STATE STATUTES

N.J.S.A. 2A:158A-1 et. seq.....3
N.J.S.A. 52:27E-2.....2
N.J.S.A. 52:27E-24.....2
N.J.S.A. 52:27E-25.....2
N.J.S.A. 52:27E-29.....2
N.J.S.A. 52:27E-30.....2

OTHER AUTHORITIES

Aggernaes, "The Experienced Reality of Hallucinations and Other Psychological Phenomena," 48 Acta Psychiatrica Scandinavica 220 (1972).....30

Aggernaes, "The Experienced Reality of Hallucinations in Young Drug Abusers and Schizophrenic Patients," 48 Acta Psychiatrica Scandinavica 287 (1972).....35

Ballentine's Law Dictionary (1930).....15

Biggs, The Guilty Mind (1955).....15

W. Blackstone, Commentaries (1st ed. Oxford 1765-69).....15

Bland and Orn, "Schizophrenia: Schneider's First Rank Symptoms and Outcome," 137 Brit. J. Psychiat. 63 (1980).....37

Broom, A Selection of Legal Maxims (London 1845).....15

Chaika, "Thought disorder or speech disorder in schizophrenia," 8 Schiz. Bull. 588 (1982).....46

Chaika and Lambe, "The Locus of Dysfunction in Schizophrenic Speech," 11 Schiz. Bull. 8 (1985).....46

Ciompi, "Catamnestic Long-term Study on the Course of Life and Aging in Schizophrenia," 6 Schiz. Bull. 606 (1980).....37

Coke, The First Part of the Institutes of the Laws of England, or a Commentary Upon Littleton (17th ed. 1817).....15

Department of Justice, State of California, Admissibility of Out-of-Court Confessions (1972).....43

"Developments in the Law-Confessions," 79 Harv. L. Rev. 938 (1966).....45, 54

Diagnostic and Statistical Manual of Mental Disorders (3rd ed. 1980).....27

Dix, "Mistake, Ignorance, Expectation of Benefit and the Modern Law of Confessions", 1975 Wash. U.L.Q. 275.....31

Ellis and Luckasson, "Mentally Retarded Criminal Defendants" 53 Geo. Wash. L.R. 414 (1985).....22, 42

Fonagy, "Punishment vs. Negative Reinforcement in the Aversive Conditioning of Auditory Hallucinations," 20 Behav. Res. Ther. 483 (1982).....30

Frank, Persuasion and Healing (1973).....57

Gillis and Blevens, "Sources of Judgmental Impairment in Paranoid and Non-paranoid Schizophrenics," 87 J. Abn. Psychol. 587 (1978).....27, 46

Glass, "Schizophrenia and Language: The Internal Structure of Political Reality" 92 Ethics 274 (1982).....46

Gould, The Flamingo's Smile (1985).....48

Grano, "Voluntariness, Free Will and the Law of Confessions," 65 Va. L. Rev. 859 (1979).....45, 57

Gudjonsson, "Interrogative Suggestibility: Comparison Between 'False Confessors' and 'Deniers' in Criminal Trials," 24 Med. Sci. & Law 56 (1984).....32

Hale, The History of Pleas of the Crown (London 1736).....15

"Hallucinations," 6 Psychol. Med. 7 (1976).....30

Harding, Brooks, Ashikago and Strauss, Long Term Course and Prognostic Studies in Schizophrenia, (National Institute of Mental Health 40604 and 29575) (1985).....37

Hawkins, Pleas of the Crown (7th ed. 1795).....16, 20

Heilbrun, "Impaired Recognition of Self-Expressed Thought in Patients With Auditory Hallucinations," 89 J. Abn. Psychol. 728 (1980).....47

Heilbrun and Blum, "Cognitive Vulnerability to Auditory Hallucination Impaired Perception of Meaning," 144 Brit. J. Of Psychol. 508 (1984).....47

Inbau, Reid and Buckley, Criminal Interrogations and Confessions (3rd ed. 1986).....43

Kamisar, Police Interrogation and Confessions (1980).....44, 58

H. Kaplan and B. Sadock, eds. Comprehensive Textbook of Psychiatry (4th ed. 1985).....29, 36

Kerns, "Falsifications in the Psychiatric History: A Differential Diagnosis." 49 Psychiatry 13 (Feb. 1986).....32

Kolb and Brodie, Modern Clinical Psychiatry (10th ed. 1982).....29

Lanin-Kettering and Harrow, "The Thoughts Behind the Words: A View of Schizophrenic Speech and Thinking Disorders" 11 Schiz. Bull. 1 (1985).....46

Levitt and Lester, Insanity and Incompetence: Case Studies in Forensic Psychology (1984).....42

McGhie and Chapman, "Disorders of attention and perception in early schizophrenia," 34 Brit. J. Med. Psychol. 103 (1961).....28

Menolascino, Challenges in Mental Retardation: Progressive Ideology and Services (1977).....42

Mintz and Alpert, "Imagery Vividness, Reality Testing and Schizophrenic Hallucinations," 79 J. Abn. Psych. 310 (1972).....30

National District Attorneys Association, Confessions and Interrogations After Miranda: A Comprehensive Guideline of the Law (1978).....43

Note, "The Accused Mental Retardate" 4 Col. Human Rts. L.R. 239 (1972).....42

Owens, "When is a Voluntary Commitment Really Voluntary?", 47 Amer. J. Orthopsychiatry 104 (1977).....28

Ray, A Treatise on the Medical Jurisprudence of Insanity (1838).....30, 34

Reik, The Compulsion to Confess (1959).....53

Sadoff, "Forensic Psychiatry" in C. Wecht, ed. Forensic Science, (1985).....55

Schulhofer, "Confessions and the Court," 79 Mich. L. Rev. 865 (1981).....45

S. Scott ed., The Civil Law (1932).....15

Seman, "A Juvenile's Waiver of the Privilege Against Self-Incrimination--A Federal and State Comparison," 10 Am. J. Crim. Law 27 (1982).....43

Silverman, "Scanning Control Mechanism and 'Cognitive Filtering' in Paranoid and Non-paranoid Schizophrenia," 28 J. of Con. Pscychol. 385 (1964).....27

Simon, Mind and Madness in Ancient Greece (1978).....30

Slade, "Towards a Theory of Auditory Hallucinations: Outline of an Hypothetical Four Factor Model," 15 Brit. J. of Soc. Clin. Psychol. 415 (1976).....30

State of Tennessee Legislative Council Committee, Study on Mentally Retarded Offenders (1970)..22

Stein, Contemporary Psychotherapies (1961).....57

Taylor and Abrams, "The Prevalence of Schizophrenia: A Reassessment Using Modern Diagnostic Criteria," 135 Am. J. of Psychiat. 945 (1978).....36

Tomko, The Mentally Retarded Offender: A Problem for the Community and the Law (1968).....22

Torrey, Surviving Schizophrenia, A Family Manual (1983).....49

C. Wecht, ed. Forensic Sciences (1985).....55

Westermayer and Harrow, "Prognosis and Outcome Using Broad (DSM II) and Narrow (DSM III) Concepts of Schizophrenia," 10 Schiz. Bull. 624 (1984).....36

Westin, "Incredible Dilemmas: Conditioning One Constitutional Right on the Forfeiture of Another," 66 Iowa L.R. 741 (1981).....21

World Health Organization, Schizophrenia: An International Follow-Up Study (1979).....37

Wulach, "The assessment of competency to waive Miranda rights," 9 Jour. of Psych. & Law 209 (1981).....44

I. STATEMENT OF INTEREST OF AMICI CURIAE

This brief amici curiae is being filed in support of the Respondent. Both parties have consented to the filing of this brief and their consents are on file with the Court.

Amici curiae, the organizational members of the Coalition for the Fundamental Rights and Equality of Ex-patients[1/] (hereinafter the "Coalition

---

[1/] The participants in the Coalition for the FREE are as follows:

NATIONAL MENTAL HEALTH ASSOCIATION

The National Mental Health Association ("NMHA") is the nation's oldest and largest non-governmental, citizens' voluntary organization concerned with mental illnesses and mental health. Founded in 1909 by Clifford Beers, a man who suffered from a serious mental illness, the Association has historically led efforts on behalf of mentally ill people in institutions and the community. The NMHA has grown into a network of 650 chapters and state divisions working across the United States. It is composed of volunteers who are mostly non-mental health professionals. Some are family members whose loved ones have been affected by mental illness; others are former patients. All are committed to advocacy for the improved care and treatment of mentally ill people, the promotion of mental health and the prevention of mental illnesses. (Footnote continued)

for the FREE") are all groups whose primary interests and activities concern the promotion of public understanding of mental health issues and the protection of the rights of the mentally ill and of present and former mental patients.

NEW JERSEY DEPARTMENT OF THE PUBLIC ADVOCATE

The New Jersey Department of the Public Advocate is a cabinet level agency of New Jersey state government. N.J.S.A. 52:27E-2. It has litigated extensively in major areas affecting "the public interest" for over ten years. The interest of the Department in this case arises from its long-term representation of persons charged with crime whose mental state is at issue.

The Department is specifically empowered to "represent the public interest in such administrative and court proceedings...as the Public Advocate deems shall best serve the public interest." N.J.S.A. 52:27E-29. "Public interest" is defined as "an interest arising from the Constitution, decisions of the court, common laws or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens." N.J.S.A. 52:27E-30.

Within the Department, the Division of Mental Health Advocacy was established to represent "indigent mental hospital admittees" in individual matters involving their admission to, retention in, or release from "mental hospitals," N.J.S.A. 52:27E-24, and to represent such persons in class actions on "an issue of general application to them," N.J.S.A. 52:27E-25. (Footnote continued)

Members and clients of these organizations include many former patients, their families and friends, as well as advocates for the mentally ill.

The Office of the Public Defender is administratively housed in the Department and provides criminal defense services to all indigent persons in the State charged with indictable offenses. See, N.J.S.A. 2A:158A-1 et seq. In 1984, the Public Defender represented indigents in 45,131 indictable cases. Of those, 44 were new capital punishment cases. Since the restoration of the death penalty in New Jersey, the Public Defender has represented a total of 89 defendants in capital cases.

The Department has participated before this Court both as counsel and as amicus curiae in a number of cases related to the issues before the Court here. See, e.g., Ake v. Oklahoma, 470 U.S. --, 105 S.Ct. 1007 (1985); Jones v. United States, 463 U.S. 354, 103 S.Ct. 3043 (1983); Kremens v. Bartley, 431 U.S. 119 (1977); Strickland v. Washington, 104 S.Ct. 2052 (1984) reh. den. 104 S.Ct. 3562 (1984); Smith v. Sielaff, cert. granted, 54 U.S.L.W. 3262, (U.S. Oct. 21, 1985) (No. 85-5487) (argued March 4, 1986); and United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms v. Galioto prob. juris. noted, 54 U.S.L.W. 3292 (U.S. Nov. 5, 1985) (No. 84-1904) (argued March 26, 1986).

NATIONAL MENTAL HEALTH CONSUMERS ASSOCIATION

The National Mental Health Consumers Association was organized in Baltimore, Maryland in June, 1985, as a national representative voice for mental health consumers and charged with developing national forums so that the concerns of mental health consumers can be heard. (Footnote continued)

This case, like others in which the Coalition and/or its members have filed recent amicus briefs in this Court,

SHARE OF DAYTONA BEACH, FLORIDA, INC.

SHARE of Daytona Beach, Florida, Inc., organized in Daytona Beach in January, 1980, was incorporated in November, 1985 as a non-profit corporation in the State of Florida. SHARE's primary thrust is the rights of mental patients and former mental patients.

THE MENTAL PATIENT'S ASSOCIATION OF NEW JERSEY

The Mental Patient's Association of New Jersey was established in May, 1984 in Asbury Park, New Jersey and is a statewide network of individuals and self help organizations devoted to the development of self-help and advocacy groups and the protection of the interests and rights of mental health consumers.

THE MENTAL PATIENTS' ASSOCIATION OF PHILADELPHIA

The Association was formed in Philadelphia in 1985 in an effort to organize mental health consumers to oppose all efforts to erode the rights and freedoms of those who have been hospitalized for psychiatric illness and to call for an end to discrimination against the psychiatrically disabled in any form.

THE MONTANA MENTAL HEALTH CONSUMERS ADVOCACY PROJECT

The Montana Mental Health Consumers Advocacy Project, an unincorporated association formed in November, 1983 in Billings, Montana, is an ex-mental patient self-help and political action group, organized for the purposes of fighting discrimination and stigma and influencing legislation for the rights of mental patients.

involves issues of mental conditions and the rights of patients and ex-patients.[1a/] Indeed, the Respondent himself was, at the time of his confession, an ex-patient and is now again a patient. From the perspective of amici, the experience of Respondent is fairly typical of the legal "double bind" often faced by ex-patients: For the purposes of involuntary commitment and treatment, employment and housing, mental conditions are often presumed to be severely disabling; however, for purposes of disability benefits, and all aspects of criminal law and procedure (including the insanity defense, incompetency determinations and mitigation of punishment),

---

[1a/] See, e.g., the brief amici curiae filed by the Coalition in United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms v. Galioto, above. See also, Brief of the Office of the Capital Collateral Representative et al. as amici curiae in Ford v. Wainwright, cert. granted, 54 U.S.L.W. 3392 (U.S. Nov. 10, 1985) (No. 85-5542).

these conditions are becoming increasingly as widely suspect and questioned as is Respondent's status here.[1b/]

In this case, the Court will hear arguments specifically on the effects of mental conditions on the voluntariness of confessions, and on the effectiveness of waiver of Miranda rights. Whatever this Court decides in this case will undoubtedly affect the outcome of similar cases in the future and will also likely impact on all proceedings involving the criminal law, confessions and/or mental conditions, including cases in the state courts. Therefore, amici curiae now wish

---

1b/ This Court's caseload this Term itself reflects the increasing concern about these and related issues. See, in addition to this case, United States Department of Treasury, Bureau of Alcohol, Tobacco and Firearms v. Gallioto, above, and Ford v. Wainwright, above. See also Smith v. Sielaff, above; Allen v. Illinois, cert. granted 54 U.S.L.W. 3328 (U.S. Nov. 12, 1985) (No. 85-5404) (argued April 30, 1986); and Wainwright v. Greenfield, 106 S. Ct. 634 (1986).

to share their specialized knowledge and insights with this Court and the parties in this case.

Amici curiae believe that no other party or amici in this case will make available to the Court these scientific research studies on the effects of schizophrenia and hallucinations on voluntariness and understanding, extensive material on such related issues as suggestibility and reliability, and the relevant caselaw on confessions, voluntariness and waiver. Amici curiae believe that they have a clear interest in this case, and can offer a significant alternate viewpoint on these issues to this Court.

II. SUMMARY OF ARGUMENT

In this Brief, amici curiae respectfully urge this Court to affirm the decision of the Colorado Supreme Court in this case on several bases. Our civilized system of justice has long recognized the disabling effects of certain severe mental conditions, such as those involved here, with respect to virtually all otherwise voluntary actions. Under this Court's precedents and other authorities on the voluntariness of confessions and the effects of mental conditions, the initial statement involved here must be suppressed because the ex-patient was not capable of acting freely or with the required understanding of the effects of his statement, as documented by scientific and academic research studies of schizophrenia, mental-condition related hallucinations and the

suggestibility issue as it is related to these conditions. Point III A.1.

By comparison to the effects of similar mental conditions on competency and responsibility at other stages of criminal proceedings, the ex-patient's condition clearly meets the applicable standards for negating the voluntariness of his confession. Similarly, other conditions analogous to the ex-patient's mental condition involved here have been widely held to negate the voluntariness of confessions. Elsewhere, this Court and other authorities have also accepted mental conditions such as those of this ex-patient for this purpose. Point III A.2.

The ex-patient's mental condition here also nullified the attempted Miranda warnings given by the police officer. Indeed, Miranda v. Arizona, 384 U.S. 436 (1966), itself involved mental

abnormality as one of the factors negating the confession. Miranda and its progeny all assume basic objective conditions of understanding and free will that are absent in this case. This Court and other authorities have denied waiver of Miranda rights in analogous situations involving low intelligence, youthful age, and other conditions interfering with an intelligent and free waiver. Relevant scientific and academic research studies document the effects of schizophrenia and hallucinations on cognition and voluntariness. Point III B.1.

Here, because of its proven disabling effects, the ex-patient's mental condition clearly meets the criteria for negating the effectiveness of any purported waiver of his Miranda rights. Point III B.2.

III. ARGUMENT

A. Under this Court's Due Process Precedents, the Ex-Patient's Initial Statement, Compelled by His Belief in a Divine Mandate, Must Be Suppressed as Involuntary.

1. Our Civilized System of Justice Has Traditionally Recognized Certain Severely Disabling Mental Conditions as Limitations on Voluntary Acts.

In its opinion in this case, the Colorado Supreme Court upheld the trial court's determination that Respondent's initial statement to the police officer was not voluntary:

> The testimony of Dr. Metzner established that the defendant on this occasion was suffering from a serious mental disorder which placed him in the dilemma of confessing his crime to the police or committing suicide. Given this state of evidence, it was within the court's prerogative to rule that the defendant's initial statement to Officer Anderson was not the product of a rational intellect and a free will notwithstanding the fact that this statement was neither solicited by the officer nor was the result of any form of police action.

People v. Connelly, 702 P.2d 722, 729 (Colo. 1985)

In the relevant section of its opinion, the Colorado Supreme Court cited, quoted, and relied upon, inter alia, Culombe v. Connecticut, 367 U.S. 568 (1961); Blackburn v. Alabama, 361 U.S. 199 (1960) and Townsend v. Sain, 372 U.S. 293 (1963), for the basic propositions that such an involuntary statement is "not the product of a rational intellect and a free will" and that "(o)ne's capacity for judgment and free choice may be overborne as much by certain forms of severe mental illness as by external pressure." 702 P.2d at 728.

The Blackburn decision by itself belies the State's claims[1c/] that there

---

1c/ The State's filings include its Jurisdictional Statement ("JS") and its Brief on the merits ("SB"). The briefs amicus curiae in support of the State include the brief of the Solicitor General of the United States ("USSG"), the brief of the American Psychological Association ("APA"), and the brief of the Americans for Effective Law Enforcement, Inc. et. al. ("AELE").

is simply no precedent for this decision by the Colorado Supreme Court.[2/] In Blackburn, this Court described the development of the law regarding these very issues up to that time, over a quarter century ago:

> [A] complex of values underlies the stricture against use by the state of confessions which, by convenient shorthand, this Court terms involuntary, and the role played by each in any situation varies according to the particular circumstances of the case.
>
> In the case at bar, the evidence indisputably establishes the probability that Blackburn was insane and incompetent at the time he allegedly confessed. Surely in the present stage of our civilization a most basic sense of justice is affronted by the spectacle of incarcerating a human being upon the basis of a statement he made while insane; and this judgment can without difficulty be articulated in terms of the unreliability of the confession, the lack of rational choice of the accused, or simply a strong conviction that our system of law enforcement should not operate so as to take advantage of a person in this fashion.

351 U.S. at 207 (emphasis added)

[2/] See, e.g., SB, at 10, 11; USSG Brief, at 11-17; AELE Brief at 6

Notwithstanding that language, however, the State and its supporting amici continue to contend that Blackburn, Culombe and Townsend necessarily require both police or "state" involvement in addition to an underlying, severely disabling mental abnormality in order to support a finding of involuntariness.[3/]

It is the position of the Coalition for the FREE that this Court, as well as other American and English legal authorities, have long recognized the limitations placed upon virtually all voluntary actions by the compelling nature of such mental conditions alone.[4/]

[3/] Id.

[4/] The earliest maxims from the Roman and common law document the disabling effects of mental conditions in a wide variety of legal contexts. See, e.g., furiosi nulla voluntas est ("a madman has no will"); furiosus absentis loco est ("a madman is in the same position as one who is absent"); furiosus nullum negotium contrahere gerere potest [quia non intelligit quod agit] ("an insane person cannot make a contract [because he cannot under-

(Footnote continued)

This judicial and societal recognition of the disabling effect of certain severe mental conditions and delusions has long resulted in the nullification or negation of the otherwise assumed voluntary nature of actions required for legal purposes

---

stand what he is doing]"); furiosi stipulari non potest nec aliquod negotium agere, qui non intelligit quid agit ("an insane person who does not understand what he is doing cannot contract nor transact any business"); and furor contrahi matrimonium non sinit, quia consensu opus est ("insanity prevents a marriage from being contracted, because consent is essential.") Ballentine's Law Dictionary 537, 538 (1930), and cases cited therein. See I W. Blackstone, Commentaries 426-427 (1st ed. Oxford 1765-69) ("Blackstone") (invalid marriage contract); 2 Blackstone, 291 (voidable conveyance or purchase of land); 4 Blackstone 24 ("furiosus furore solum punitur" [a madman is punished by his madness alone]). This maxim appears in numerous English and American cases and treatises on the insanity defense. See, e.g., Broom, A Selection of Legal Maxims 5 (London 1845); Coke, The First Part of the Institutes of the Laws of England, or a Commentary Upon Littleton 247b (17th ed. 1817). See also, 1 Hale, The History of the Pleas of the Crown 29-37 (London, 1736); and Biggs, The Guilty Mind 47-56, 81-88 (1955). See also, The Digests (Pandects) of Justinian, 50, 17, 5 in 9 S. Scott ed., The Civil Law, 297 (1932) ("In business transactions, the condition of an insane person is one thing, and that of a minor...another, although neither may perfectly understand what is required of him, for an insane person cannot transact any business whatever....")

generally[5] and in the context of the criminal law in particular.[6] Thus, this Court and others have long and consistently recognized that the extent of a person's criminal accountability and responsibility may be limited in a number of contexts by such mental conditions and

---

[5] Id.

[6] This Court itself has repeatedly quoted from one classic statement of this proposition as it applies specifically to confessions:

> And as the human mind under the pressure of calamity is easily seduced, and liable, in the alarm of danger, to acknowledge indiscriminately a falsehood or a truth, as different agitations may prevail, a confession, whether made upon an official examination or in discourse with private persons, which is obtained from a defendant either by the flattery of hope, or by the impressions of fear, however slightly the emotions may be implanted, is not admissible evidence; for the law will not suffer a prisoner to be made the deluded instrument of his own conviction.
> Hawkins, 4 Pleas of the Crown, c. 46, Section 34 ,425 (7th ed. 1795)

See, e.g., Watts v. Indiana, 338 U.S. 49, 54 (1949); See also, Moran v. Burbine, 54 U.S.L.W. 4625, 4270 n.1 (U.S. March 11, 1986) (No. 84-1485) (Stevens, J. dissenting).

delusions.[7]

The descriptions of these severely disabling mental conditions have themselves evolved with the law from the generalities first used, such as "madness," "lunacy" and "insanity,"[8] to the more specific diagnostic terminology presently used, which includes the terms applied to describe Respondent's mental condition in this case, "psychosis," "chronic paranoid schizophrenia," "delusions" and "command auditory

---

[7] See, e.g., Blackburn, 361 U.S. at 281. See also, Greenwood v. United States, 350 U.S. 410 (1956) (commitment of mentally incompetent accused); Baxstrom v. Herold, 383 U.S. 107 (1966) (commitment of prisoner); Jackson v. Indiana, 406 U.S. 715 (1972) (commitment of mentally incompetent accused); Maggio v. Fulford, 103 S.Ct. 2261 (1983) (incompetency to stand trial); Jones v. United States, 103 S.Ct. 3043 (1983) (indefinite commitment of insanity acquitee); Ake v. Oklahoma, 105 S.Ct. 1087 (1985) (insanity defense of indigent); Wainwright v. Greenfield, 106 S.Ct. 634 (1986) (insanity defense); Ford v. Wainwright, above (execution of insane convict).

[8] See n.4 above. See, e.g., Greenwood, 350 U.S. at 413 See also, Blackburn, 361 U.S. at 277.

hallucinations."[9/]

Whatever the precise terminology employed, however, it is clear that this Court has recognized the linkage between such mental conditions per se and the "complex" of factors affecting our still-developing concept of "voluntariness." Blackburn, 361 U.S. at 207. The Solicitor General argues nevertheless that this case does not involve procedures "so offensive to a civilized system that they must be condemned under the Due Process clause of the Fourteenth Amendment" Miller v. Fenton, 106 S.Ct. 445 (1985). See USSG Brief at 12. Similarly, the Solicitor General argues that the proposed use of the initial statement here would "fall within the broad constitutional boundaries imposed

---

[9/] See, e.g., Blackburn, 361 U.S. at 209 n.8, "regarding Blackburn's diagnosis as being 'psychosis', 'schizophrenia of the paranoid type' and having 'delusions'. See also Point III A.2. below.

by the Fourteenth Amendment's guarantee of fundamental fairness." Id.

It is the Coalition's position that permitting use of Respondent's initial statement would offend both our "civilized system" of justice and our sense of "fundamental fairness in the use of evidence whether true or false"[10/] and as perceived by the "traditions and conscience of our people."[11/] As shown above, our history supports a finding of involuntariness in cases involving severely disabling mental conditions. To encourage the State to seek a benefit in this way from the mentally disabled accused -- particularly as a direct result of their illnesses -- is truly to make such prisoners the "deluded

---

10/ Lisenba v. California, 314 U.S. 219, at 236 (1941). See also, Rogers v. Richmond, 365 U.S. 534, 544 (1961).

11/ Griswold v. Connecticut, 381 U.S. 479, at 493 (1964) (Goldberg, J. concurring).

instruments of their own convictions"[11a/] in direct contravention of one of our basic legal traditions.

The State and its supporting amici would rely on such statements despite the explicit threat of divine compulsion and implicit promise of divine benefit involved[12/] just so long as the police themselves were not involved in either source of pressure. On this issue, the most compelling argument is derived from Hunter v. People, 655 P.2d 374 (Colo. 1982), the "private police" case relied on by the Colorado Supreme Court in its opinion in this case. 702 P.2d at 728. There, too, an agency other than the State had acted to compel a confession. Based on Hunter, the Colorado courts here correctly held that a confession obtained

---

11a/ See Hawkins, 4 Pleas of the Crown, above at n.6.

12/ See Point III A.2 below, regarding this duality in Respondent's situation.

through such a Hobson's choice of death or self-incrimination could not be let stand simply because some other form of effective compulsion had privately been substituted for State involvement.[12a/] Surely, the use of a confession knowingly obtained by police after threats from a real, visible but independent third party would be no more "civilized" or "fundamentally fair" than would be the use of Respondent's initial statement.[13/]

12a/ See e.g., Simmons v. United States, 390 U.S. 377, 391 (1968) (regarding the "Hobson's choice" of choosing between 4th and 5th Amendment rights). See also, Green v. United States, 355 U.S. 184, 193 (1957) ("incredible dilemma") and Westin, "Incredible Dilemmas: Conditioning One Constitutional Right on the Forfeiture of Another," 66 Iowa L.R. 741, 744-5, n.14 (1981).

13/ To decide otherwise would be to invite a new form of private "vigilanteism" concerned with confessions rather than punishment. See, e.g., the cases cited in Respondent's Brief in Opp. ("RBO") at 10. Both the State and the USSG cite other cases on this still-emerging issue. See SB at 19 citing Kwiatkoski v. People, 706 P.2d 407 (Colo. 1985) (confession to supervisor and security consultant) and USSG Brief at 16, n.4 citing United States v. Murphy, 763 F.2d 202 (6th Cir. 1985) cert. denied 54 U.S.L.W. __ (U.S.Jan. 13, 1986) (No. 85-5350) (confession obtained through use of a police dog).

Similarly, the cases relied on by the Colorado Supreme Court are representative of cases involving other conditions and susceptibilities which this Court and others have recognized as limiting voluntary acts in this and related contexts.[14/] These cases -- and other authorities like Culombe, Blackburn and Townsend -- all document the develop-

---

[14/] See, e.g., Fikes v. Alabama, 352 U.S. 192, 193 (1957) ("a schizophrenic and highly suggestible"), id. at 196 ("an uneducated Negro, certainly of low mentality, if not mentally ill")and id. at 197 ("a weaker and more susceptible subject"); Reck v. Pate, 367 U.S. 433, 443 (1961) ("a case of at least borderline mental retardation"); Spano v. New York, 360 U.S. 315, 322 (1959) ("history of emotional instability"); Leyra v. Denno, 347 U.S. 556. 561 (1954) ("almost trance-like submission"). See, generally, Ellis and Luckasson, "Mentally Retarded Criminal Defendants," 53 Geo. Wash. L.R. 414, at 445 (1985) ("American courts have long recognized that confessions by mentally retarded persons are somewhat suspect...."). See also State of Tennessee Legislative Council Committee, Study on Mentally Retarded Public Offenders, 24 (1970) ("Coercion takes on an entirely different meaning when dealing with the retardate....A confession by a suspected retardate must be viewed with skepticism. . . .")citing Tomko, The Mentally Retarded Offender: A Problem for the Community and the Law (1968).

ment of our "civilized system's" sensitivity to the effects of such conditions on voluntary actions including confessions.

Another concern repeatedly noted by this Court in the context of compelled confessions is the issue of the reliability of the information divulged in such situations.[15/] See Blackburn, 361 U.S. at 207. To the extent that mental or other conditions may involve both delusions and suggestibility as well as communication problems,[15a/] the same issue of reliability is raised here as by State involvement in physical or mental torture through the most directly applied force or threats.

This Court and others have long conceded the pain and mental anguish

---

15/ See Point III A.2. below, regarding the "suggestibility" of persons with mental conditions.

15a/ See Point III B.1. below, regarding the "language" problems of schizophrenics.

attendant to these conditions even in non-adversarial situations.[16/] Given the "suggestible" and delusional nature of these mental conditions, the fear-instilling context of criminal proceedings and the resulting concern about reliability, the presence or absence of the State as the prime motivator of a "compelled" confessions seems quite irrelevant to the "reliability" of what is still an essentially involuntary confession.

16/ See, e.g., Rennie v. Klein, 476 F.Supp. 1294, 1309 (1979) ("Medicine has not yet found a cure for the terrible pain of mental illness. The law cannot assist in this endeavor. But the constitution can and does prevent those who have suffered so much at the hands of nature from being subjected to further suffering at the hands of man."); See also, Watts v. Indiana, 338 U.S. 49, at 52 (1949) ("There is torture of the mind as well as body...."") and Parham v. J.R., 442 U.S. 584, 600, 601 (1979) ("In terms of public reaction the child who exhibits abncrmal behavior may be severely injured by an erroneous decision not to commit.") cf. Mincey v. Arizona, 437 U.S. 385, p. 401-402 (1978) ("But Mincey was weakened by pain and shock, isolated from family, friends and legal counsel and barely conscious, and his will was simply overborne.")

2. The Ex-patient's Mental Condition and Hallucinations Clearly Satisfy the Criteria for Suppressing His Initial Statement As Involuntary

In Miller v. Fenton, 106 S.Ct. at 453, this Court recently noted that "[a]lthough sometimes framed as an issue of 'psychological fact'. . . the dispositive question of the voluntariness of a confession has always had a uniquely legal dimension." Describing that dual quality of voluntariness as "mixed," "hybrid" or "amphibian," this Court then said that this very dual nature "militates against treating the question as one of simple historical fact." Id. Here, under the caselaw set forth above, both the Respondent's mental condition and its effects satisfy the essential requirements of "involuntariness" under any legal standard or rubric.

For example, the concepts of "free will" and "rational choice" or "rational

intellect" can hardly be used to describe Respondent's mental condition at the time of his initial statement. Respondent's overriding compulsion to confess is apparent whether one chooses to rely on the transcripts of the testimony of the police,[17] the psychiatrist,[18] the public defender investigator,[19] or the psychiatric reports of Respondent's own statements.[20] In the first instance, the Respondent's diagnosed mental condition negated any possibility of "free will" or "rational choice", as the courts below

---

[17] See Tr. 8-10 (Testimony of Officer Anderson) The hearing transcript was submitted to this Court as Exhibit 2 to RBO.

[18] See Tr. 55-58 (Testimony of Dr. Metzner)

[19] See Tr. 40-45 (Testimony of Ms. Lindecrantz)

[20] See Report of Colorado State Hospital re: Francis Barry Connelly, dated Oct. 2, 1983 ("the Report")

properly found.[21] Moreover, when considered in combination with his hallucinations, it can hardly be

---

[21] As noted above, Respondent's diagnosis is "paranoid schizophrenia." The standard diagnostic manual notes that with this diagnosis in particular: "The impairment in functioning may be minimal if the delusional material is not acted upon...." Diagnostic and Statistical Manual of Mental Disorders, 3rd ed. (1980) ("DSM III") (emphasis added). As one authority noted, studies report "again and again and again" that schizophrenics are more impaired and perform less adequately than normals on cognitive tasks. Silverman, "Scanning Control Mechanism and 'Cognitive Filtering' in Paranoid and Non-paranoid Schizophrenia, "28 J. Abn. Psychol. 385 (1964) Another study, citing Silverman, above, stated that:

> Paranoid patients...would be expected to demonstrate considerable consistency in their judgmental behavior, although they might hold erroneous ideas regarding how task information should be used....Paranoid patients, while being highly consistent in their performance, would be expected to focus on incorrect cues, to evaluate the available information erroneously....(T)he rigidity of paranoid individuals would render them less able to use...feedback effectively.

Gillis and Blevens, "Sources of Judgmental Impairment in Paranoid and Nonparanoid Schizophrenics," 87 J. Abn. Psychol. 587, 588 (1978).

Finally, with regard to the overall reasoning process of schizophrenics, one leading study

(Footnote continued)

questioned that the total effect of all these factors on Respondent was extremely limiting on any purported "voluntary" activity regarding his initial statement

---

observed:

> Normal thinking involves the purposeful manipulation of the internal images and ideas which form our stock of previously acquired information. In bringing our thoughts to bear on a specific problem we abstract from the total field of information that which is relevant to the task in hand. Thinking, or more accurately, reasoning, is thus a highly selective process in which inhibition is intimately linked with the degree of abstractness of the thought product. Indeed, the concept of control, direction and inhibition is central to the process of logical reasoning....It is this very lack of control, direction and inhibition which characterizes the disturbances of thinking reported by our patients.

McGhie and Chapman, "Disorders of attention and perception in early schizophrenia," 34 Brit. J. Med. Psychol. 103, 109 (1961) (emphasis added) See also, Owens, "When is a voluntary commitment really voluntary?" 47 Amer. J. Orthopsychiatry 104 (1977) ("It is certainly not being argued that any psychotic person is incapable of any voluntary action, merely by virtue of having a thought disorder....It is sufficient to note that the patient's difficulties are painfully obvious, and cannot be defined out of existence....But the psychiatrist cannot by any legal maneuver convert a patient's passivity and confusion into understanding and autonomy.")

to the policeman.[22] The disabling -- and threatening -- aspects of such compelling hallucinations have long been

---

[22] With regard to hallucinations, the relevant research studies and leading academic commentators support a finding of their intensely compelling character. See, e.g., H. Kaplan and B. Sadock, eds. Comprehensive Textbook of Psychiatry 574 (4th ed. 1985):

> When schizophrenic patients are wide awake by all neurophysiological criteria, they may experience hallucinations as vivid as those experienced by normal people during dreams. They often act on these inner perceptions, as though they were more compelling than the external realities that compete for the schizophrenics attention....

See also, Id. at 683:

> The hallucinations may absorb all or much of the attention of schizophrenics, and may control their behavior considerably. While listening to voices, they may be preoccupied and oblivious to the environment.

See also Kolb and Brodie, Modern Clinical Psychiatry, 126 (10th ed. 1982):

> Hallucinations conveying a command are often convincing and compelling. They may therefore lead to direct and dangerous action. Considerations of reality are of little weight in comparison to their influence. (emphasis added) (Footnote continued)

noted.[22a]

Finally, the interrelated issues of "reliability" and "suggestibility" must be factored into the calculus of

---

One research study concluded that "the true hallucinations of chronic schizophrenic patients are akin to actual perceptions in having positive reality characteristics and in being clearly discriminable from imagined objects and people." Aggernaes, "The Experienced Reality of Hallucinations and Other Psychological Phenomena," 48 Acta Psychiatrica Scandinavica 220 (1972) as noted in "Hallucinations" 6 Psychol. Med. 7 (1976) Other studies have noted the resistance of some persistent auditory hallucinators to treatment, Fonagy, "Punishment vs. Negative Reinforcement in the Aversive Conditioning of Auditory Hallucinations," 20 Behav. Res. Ther. 483 (1982) and the difference in hallucination experiences between schizophrenics and "normals," Mintz and Alpert, "Imagery Vividness, Reality Testing, and Schizophrenic Hallucinations," 79 J. Abn. Psychol. 310 (1972). A series of English studies have documented the linkage between hallucinations and psychological stress. See, e.g., Slade, "Towards a Theory of Auditory Hallucinations: Outline of an Hypothetical Four-Factor Model," 15 Brit. J. of Soc. Clin. Psychol. 415 (1976)

[22a] See, e.g., Simon, Mind and Madness in Ancient Greece, 104 (1978) (regarding Aeschylus' Choephoroi in which Orestes is taken over by forces out of control resulting in a drama of madness in which he is merely a participant rather than an active initiating agent). See also, Ray, A Treatise on the Medical Jurisprudence of Insanity, Section 167 (1838): (Footnote continued)

voluntariness in this case.[23/] We have already noted the caselaw concerning the "reliability" issue in connection with coerced confessions of the more conventional sort. See Point III A.1.

> A little strangeness of demeanor may, for months be the only perceptible deviation from the natural condition; the reason, in the meanwhile, struggling with the suggestions of the hallucinated sense, till it finally yields, and the patient, in obedience to some voice or vision, commits a sudden and fearful act of violence. (emphasis added)

The parallel between these historical descriptions and the facts here are compelling. See Tr. 52-3 (Testimony of Dr. Metzner) and n.51 below also as to the myth of Orestes. Here, in addition however, while Respondent clearly felt similarly "threatened" by his hallucinations, he apparently also believed that, at least by implication, he would be "forgiven" if he made the mandated confession. See, e.g., Report at 5 ("God was telling me to do it [confess]. . . if I wouldn't obey him, I would go to hell forever.") This expectation of even such an implied benefit -- divine forgiveness rather than eternal damnation -- provides the basis for another argument against the "voluntariness" of both Respondent's initial and later, post-Miranda statements. See, e.g., Dix, "Mistake, Ignorance, Expectation of Benefit and the Modern Law of Confessions", 1975 Wash. L.R. 275.

23/ On these issues, one recent study concluded as follows: (Footnote continued)

above. However, the concern here is that Respondent's initial statement -- and the "initial statements" of future severely mentally disordered suspects -- may only reflect events in fact observed by a "false confessor" who himself is but an innocent witness or helpless victim rather than a guilty principal.[24/] But

---

> Like delusions, confabulations are unconscious (citing DSM III)....Confabulations may be remarkable for their detailed nature, their changeable character from moment to moment, and for the extent to which they can be provoked or suggested.

Kerns, "Falsification in the Psychiatric History: A Differential Diagnosis," 49 Psychiatry 13 (Feb. 1986) (emphasis added)

Clearly, the fact pattern of Respondent's extended "tour" to locate the crime scene at least raises some question as to the reliability of his "initial statement" and as to other possible scenarios that could account for his knowledge of the crime. See Tr. 27-30 (Testimony of Detective Antuna)

[24/] A series of English studies trace the connection between the factors of personality, self-concept and intelligence in persons who admit to crimes they did not commit. See, e.g., Gudjonsson, "Interrogative Suggestibility: Comparison Between 'False Confessors' and 'Deniers' in Criminal Trials," 24 Med. Sci. & Law 56 (1984)

see APA Brief, at 28-29 regarding Respondent's "reliability."

Perhaps typically, the State and its supporting amici have raised the "floodgates" argument concerning possible "falsifying" of future widespread mental condition claims, the "administrative burden" contention of the difficulties in police recognition of real mental disorders and the potential "line drawing" problems between such disorders and other conditions such as drug or alcohol use.25/ In the first instance, the "falsifying" issue is hardly a novel one to this Court and to the legal

---

25/ See, e.g., APA Brief, at 17, USSG Brief, at 8, 19.

system.[26] The recommendation of the APA itself belies its answer to the "falsifying" issue -- more reliance on "experts" rather than less (albeit, different experts).

The "administrative burden" issue problem is readily resolved by the weight of evidence required to support the finding that Respondent was mentally ill when he made his "initial statement."[27] The recognition of the problem by police requires only that police seek an earlier review by a mental health professional --

---

[26] See Ray, A Treatise on the Medical Jurisprudence of Insanity, Section 247, at 243 (1838):

> (T)he supposed insurmountable difficulty of distinguishing between feigned and real insanity has conduced, probably more than all other causes together, to bind the legal profession to the most rigid construction and application of the common law relative to this disease and is always put forward in objection to the more humane doctrines.

[27] See Report, at 1-5, Tr. at 47-70 (Testimony of Dr. Metzner)

again, as the APA itself seems to suggest.[28]

Finally, the "line drawing" issue is one always faced by this Court in its decisions. In the case of alcohol or drug induced confessions, this Court has already noted that there are distinctions between the nature of such conditions and that of the conditions involved here.[29] Moreover, the relevant research studies show some specific differences in the experience of such hallucinations and delusions arising from substance abuse as opposed to mental conditions.[30]

---

[28] APA Brief, at 29-30

[29] Compare, Metropolitan Life Insurance v. Massachusetts, 105 S.Ct. 2380, 2384 n.10 (1985), with Powell v. Texas, 392 U.S. 514, 526-528 (1968) and Robinson v. California, 370 U.S. 660, 666 n.8 (1962)

[30] See, e.g., Aggernaes, "The Difference Between the Experienced Reality of Hallucinations in Young Drug Abusers and Schizophrenic Patients," 48 Acta Psychiatrica Scandinavica 287 (1972)

Even if these obvious negations of the "floodgates" argument did not exist, the number of individuals with disorders that would qualify for the protection is small.[30a/] Essentially only those who are correctly diagnosed as schizophrenic would be eligible[30b/] and the appropriately diagnosed individuals with that mental disorder is shrinking.[30c/]

30a/ See, e.g., H. Kaplan, and B. Sadock, eds., Comprehensive Textbook of Psychiatry, 647 (4th ed. 1985). (Lifetime prevalence rate of schizophrenia in North America has been found to be 1.1 to 1.9 per 1000.)

30b/ See, e.g. Taylor and Abrams, "The Prevalence of Schizophrenia: A Reassessment Using Modern Diagnostic Criteria," 135 Am. J. of Psychiat. 945 (1978). (Finding as few as 6% of all psychiatric hospital admissions are schizophrenic when the appropriate rigorous diagnostic criteria are used and effects of cultural sensitivity, theoretical bias, and availability of treatment modalities are factored out.)

30c/ See, e.g., Westermeyer and Harrow, "Prognosis and Outcome Using Broad (DSM II) and Narrow (DSM III) Concepts of Schizophrenia," 10 Schiz. Bull. 624 (1984). (When the older broad criteria were used, the authors diagnosed 153 schizophrenics. Under the modern diagnostic criteria, only 62 individuals were diagnosed as schizophrenic.)

Finally, the majority of individuals, who once had the acute symptomatology of schizophrenia described throughout this brief, will improve or recover and lead normal lives.[30d/]

30d/ See, e.g., Ciompi, "Catamnestic Long-Term Study on the Course of Life and Aging in Schizophrenia," 6 Schiz. Bull. 606 (1980) Harding, Brooks, Ashikago, and Strauss, Long-Term Course and Prognostic Studies in Schizophrenia (National Institute of Mental Health 40604 and 29575) (1985); World Health Organization, Schizophrenia: An International Follow-Up Study (1979); Bland and Orn, "Schizophrenia: Schneider's First-Rank Symptoms and Outcome", 137 Brit. J. Psychiat. 63 (1980).

B. Under this Court's Miranda Precedents, The Ex-Patient's Mental Condition Nullified the Attempted Miranda Warnings and Waiver

1. Under Miranda and its Progeny, Mental Conditions Can Render Warnings and Waivers Ineffective

On the issue of the effectiveness of the Respondent's purported waiver of his Miranda rights, the Colorado Supreme Court held as follows:

> In light of the psychiatric testimony presented to the district court, we see no reason to disturb the court's conclusion that the prosecution failed to prove by clear and convincing evidence that the defendant effectively waived his Miranda rights. The testimony of Dr. Metzner clearly established that the defendant's mental condition on August 18, 1983 was such that he was incapable of making an intelligent and free decision with respect to his constitutional right of silence while in custody and his constitutional right to confer with a lawyer before talking to police.

People v. Connelly, 702 P.2d 722, 729 (Colo. 1985)

The court based its holding on the decisions of this Court in Oregon v. Elstad, 105 S.Ct. 1285, 1292 (1985) and

New York v. Quarles, 104 S.Ct. 2626, 2631 (1984), regarding the presumption of compulsion created by custodial interrogation in violation of Miranda, and on two Colorado cases placing on the prosecution the burden of proving voluntary, knowing and intelligent waiver of Miranda rights, People v. Fish, 660 P.2d 505 (Colo. 1983) and People v. Lowe, 200 Colo. 470, 616 P.2d 118 (1980) See 702 P.2d at 729. For their part, the State and its supporting amici now argue to this Court that Respondent's mental condition did not interfere with his effective waiver of his rights.[31/]

31/ See, e.g., SB at 34 ("The evidence also indicates that the defendant was capable of understanding his rights and the official consequences of their waiver."); USSG Brief at 22 ("(R)espondent's Miranda waiver was valid and his inculpatory statements should not have been suppressed."); APA Brief at 26 ("[S]uppression of respondent's precustodial and post-Miranda statements is not necessary in order to further either of the values protected by the due process clause in this context"). In an ironic turn, both the State and the Solicitor General now argue that there was an effective waiver just because of Respondent's mental condition: (Footnote continued)

The Colorado courts correctly interpreted the relationship between Miranda "competency" -- for that is really what is at issue here -- and mental conditions such as that of Respondent. From its very beginning, the Miranda case itself involved the limiting effect of Ernesto Miranda's mental condition, as clearly appears from the record and papers in that case.[32/] There, as

> "Not only was the defendant's confession not induced by police action; under the circumstances he probably could not have been prevented from confessing."
> SB at 34.
>
> "[R]espondent's compulsion ensured that he would waive his rights regardless of any pressure from the police officers." USSG Brief at 30.

These two statements alone belie the argument by the State and its amici that there could be an "intelligent and free" waiver here.

32/ See Miranda v. Arizona, 384 U.S. 199 (1960) Petition for Certiorari, at 1 (Question Presented: "Whether the written or oral confession of a poorly educated, mentally abnormal, indigent defendant, taken while he is in police custody and without the assistance of counsel, which was not requested, can be admitted into evidence over specific objection based on the absence of counsel?") (Footnote continued)

here, this special -- and documented -- mental vulnerability of the defendant was clearly one of the issues of fact before this Court and hotly debated in the parties' briefs.[33/]

Subsequently, after Miranda, this Court and others have recognized and/or implicitly assumed the basic pre-conditions of understanding and voluntariness for the effectiveness of

---

See also, Brief for Petitioner, at 3:

("A psychiatric report, made by a court-appointed psychiatrist gives the background of petitioner.... The doctor concluded that petitioner 'has an emotional illness, I would classify him as a schizophrenic reaction, chronic, undifferentiated type.'") (emphasis added)

33/ See, e.g., Brief for Respondent, at 1-2 ("While your respondent accepts the legal substance of the Question Presented as posed by the petitioner, serious issue is taken with the descriptive phrases, 'poorly educated, mentally abnormal.' The propriety of this description of the petitioner, insofar as it may enhance the question presented for review, is no doubt one of the key issues to be decided by the Court and respondent reserves the right to present argument, infra, concerning the description's accuracy and impact.") (emphasis added)

waiver of these rights. Thus, limitations on these basic pre-conditions have been widely recognized in studies involving low intelligence,[34] language difficulties,[35] educational deficien-

---

[34] See, e.g., Ellis and Luckasson Geo. Wash. L.R. above, at 448 ("The capacity issue is likely to focus on the retarded person's ability to understand the warning which Miranda requires the police to give all suspects. The first issue is whether the retarded suspect understands the concepts which constitute the warning." The authors then noted that "It has been suggested that the anxiety some retarded defendants will experience upon being arrested may reduce their ability to understand the warning statement," and cited as authority on that issue F. Menolascino, Challenges in Mental Retardation: Progressive Ideology and Services 185 (1977). See also, Note, "The Accused Retardate," 4 Col. Human Rts. L.R. 239, 251 (1972)

[35] See, e.g., Levitt and Lester, Insanity and Incompetence: Case Studies in Forensic Psychology, 59 (1984) ("It should be realized by the courts and police that many individuals who are arrested for alleged offenses do not speak English as their primary language and if interpreters are not available, there is a strong possibility that the safeguards inherent in the Miranda Warnings might be abridged.")

cies[36] and youthful age[37] as well as psychological abnormalities. In actual practice, even prosecutor and police manuals have recognized the limiting effect of mental and other conditions on effectiveness of Miranda waivers.[38]

---

[36] Id. at 58-59 ("On the other hand, if the defendant can read, he has to be able to read at a third grade level in order to comprehend sixty percent of the words in the Miranda Warnings.")

[37] See, e.g., Seman, "A Juvenile's Waiver of the Privilege Against Self-Incrimination -- A Federal and State Comparison," 10 Am. J. Crim. Law 27, 45 (1982) ("The empirical data analyzed [regarding comprehension] appears to support the need for added juvenile safeguards.")

[38] See National District Attorneys Association, Confessions and Interrogations After Miranda: A Comprehensive Guideline of the Law, 57-59 (1978) (listing youth, education, insanity, and mental retardation cases on "The Competency of Defendant"). See also Department of Justice, State of California, Admissability of Out-of-Court Confessions, 6 (1972) ("The insane suspect. If the suspect lacks the mental capacity to understand what he is doing [after Miranda warnings], his confession is inadmissible.") and Inbau, Reed and Buckley, Criminal Interrogation and Confessions, 57 (3rd ed. 1986) ("Interrogators should be highly skeptical of the behavior symptoms of a person with a psychiatric history or psychopathic traits. Such a person who has committed a criminal act may appear to be innocent; on the other hand, an innocent person with a psychological affliction may seem to be guilty....[referring to the questioning of a particular suspect] (I)ndeed he had been in several mental institutions....[referring to another suspect's interrogation] The policewoman's

(Footnote continued)

Thus, despite the State and its supporting amici's arguments about the relevancy and effects of Respondent's mental condition, there is already a well-developed body of scientific studies documenting the disabling effects of such mental conditions on Miranda waivers.[39/] In addition, there is also an impressive body of legal commentary on the nature of

---

past history revealed an "unstable personality" which undoubtedly accounted for the misleading behavior symptoms.") (emphasis added) See, on the issue of the importance of these manuals, Kamisar Police Interrogation and Confessions, at 62, 109 (1980). ("Kamisar") (Regarding the use of police manuals in the briefs and opinions in Miranda and in Escobedo v. Illinois, 378 U.S. 478 (1964).)

See also, Miller v. Fenton, 106 S.Ct. above, at 448 ("Detective Boyce presented himself as sympathetic to petitioner's plight. . . .[H]e stated that he did not consider petitioner to be a criminal because the perpetrator of the deed had a 'mental problem' and needed medical help rather than punishment.")

39/ See, e.g., Wulach, "The assessment of competency to waive Miranda rights" 9 Jour. of Psych. Law 209 (1981) ("The psychiatrist's responsibility in Miranda cases is to determine whether the defendant knowingly and intelligently waived his rights prior to confession. Typical cases referred to psychiatrists involve questions of retardation or psychoses....The Supreme Court has also specifically recognized mental retardation

(Footnote continued)

the linkage between voluntariness, Miranda rights and the effects of mental conditions such as that of Respondent here.40/ And even more specifically

---

and psychosis as factors to be concerned in evaluating the capacity of a defendant to voluntarily resist police pressure for a confession. In a psychiatric assessment of a defendant's functioning at the time of confession, the clinician may be called upon to consider the defendant's capacity to make knowing and intelligent waiver of Miranda rights....") (emphasis added)

40/ The Court already has before it the leading articles, Grano, "Voluntariness, Free Will and the Law of Confessions," 65 Va. L. Rev. 859 (1979) ("Grano") and Schulhofer, "Confessions and the Court," 79 Mich. L. R. 865 (1981) ("Schulhofer") See the Brief of Amici Curiae, Colorado Attorney General, et al, at 5. However, both Grano and Schulhofer seem to support Respondent's position that his waiver was ineffective because of his mental condition. See Grano, at 903 ("Nevertheless, we cannot ignore the Court's numerous references to defendant's subjective characteristics....[T]he Court consistently has held that a defendant's physical or mental condition is a relevant factor. The Court thus recently held involuntary a confession obtained from a wounded defendant in a hospital intensive care unit. Cases such as these reflect society's basic sense of justice.") (emphasis added) See also, Schulhofer, at 873. See generally, "Developments in the Law-Confessions," 79 Harv. L. Rev. 938, at 977 (1966) ("Developments") ("Thus it could be argued that, once it is clear that the suspect's incompetence is

(Footnote continued)

relevant, there are numerous scientific studies of schizophrenia documenting the disabling effects of such conditions particularly on both the understanding and the volition of the affected person.41/ Similarly, there are also studies of the effects of hallucinations on understanding and cognitive ability as

---

not so great as to create serious doubts about the reliability of his confession, his mental defects should not be considered in deciding whether the police can question him...." (emphasis added) Here, clearly, the evidence developed before the trial court showed just such an incompetence creating "serious doubt."

41/ See, e.g., Gillis and Blevens, Sources of Judgmental Impairment in Paranoid and Nonparanoid Schizophrenics," 87 J. Abn. Psychol 587 (1978) Of particular relevance are the still emerging studies of schizophrenia as a language dysfunction. See Chaika, "Thought disorder or speech disorder in schizophrenia," 8 Schiz. Bull. 588 (1982) (proposing that what previously has been viewed as a thought disorder should more precisely be considered a speech or language disorder) Contra Lanin-Lettering and Harrow, "The Thoughts Behind the Words: A View of Schizophrenic Speech and Thinking Disorders, 11 Schiz. Bull. 1 (1985). The debate on this issue continues up to the present time. See, e.g., Chaka and Lambe, "The Locus of Dysfunction in Schizophrenic Speech," 11 Schiz. Bull. 8 (1985). See generally, Glass "Schizophrenia and Language: The Internal Structure of Political Reality," 92 Ethics 274 (1982).

well, which have an obvious and direct relevance to the issue of the effectiveness of a Miranda waiver.[42/]

42/ See, e.g., Heilbrun, "Impaired Recognition of Self-Expressed Thought in Patients With Auditory Hallucinations." 89 J. Abn. Psychol. 728 (1980) ("Yet another way to explain why the hallucinator misinterprets the source of the perceived experience, at least in the case of auditory hallucinations, would be that those susceptible to hallucinations are generally less familiar with the characteristics of their own lexical (word) thinking than are those who are not. The logic is simple. The more limited one is in recognizing one's own thinking, the more likely it is that one will misidentify the source of a thought as being the voice of another (the usual auditory hallucination) when for any reason the discrimination is required between its having an internal or an external origin.") (emphasis added)

See also, Heilbrun and Blum, "Cognitive Vulnerability to Auditory Hallucination Impaired Perception of Meaning," 144 Brit. J. Psychol. 508 (1984) ("In the present study, reactive hallucinators displayed singular cognitive impairment in their ability to delay assignment of meaning to ambiguous stimuli and in availability of alternative meanings. This combination would be expected to reduce the quality of their perception by introducing errors of premature judgment, without the safeguard of subsequently considered alternatives.") (emphasis added) The APA repeatedly refers to the "statistical" norm for the effects of both schizophrenia and hallucinations.

(Footnote continued)

We have already noted, at Point III.A.1. above, the authorities on the issues of reliability, suggestibility, and possible falsification as related to mental conditions. Thus, just as with the Respondent's initial statement, there is a question as to the nature of the

---

See, e.g., APA Brief at pp. 20, 26. There is an inherent logical fallacy in such generalizations, even those statistically supported. As one noted scientific commentator recently observed:

> "Variation" represents the fundamental reality of nature, not an accident about a created norm. Variation is primary; essences are illusory.
> Gould, The Flamingo's Smile (1985)

Here, only Respondent's condition and its effects on his will and understanding were at issue before the Colorado courts --not all schizophrenics or all command hallucinations.

effects of such mental conditions on the "validity" of his responses to the Miranda warnings.[43/]

43/ One of the more recent comments on the "reality" of hallucinations expressed the problem in these "lay" terms:

> "Even worse tricks are played in forming true hallucinations, in which there is no initial stimulus at all. The brain makes up what it hears, sees, feels, smells or tastes. Such experience may be very real for the person. A person who hallucinates voices talking to him may hear voices just as clearly as, or even more clearly than, the voices of real people talking to him....[I]n the sense that the brain hears them, they are real." Torrey, Surviving Schizophrenia: A Family Manual, 29-30 (1983)

Thus, such "real" hallucinations are at the polar extreme of the "out of sight, out of mind" situation this Court described recently as not affecting the "voluntariness" of the confession in Moran v. Burbine 54 U.S.L.W. above, at 4267 ("Events occurring outside of the presence of the suspect and entirely unknown to him surely can have no bearing on the capacity to comprehend and knowingly relinquish a constitutional right.") Here, the hallucinations "inside" the suspect and entirely known only to him thus clearly have such a bearing on his capacity "to comprehend and knowingly relinquish" his rights .

2. The Ex-Patient's Mental Condition and Hallucinations Rendered His Miranda Waiver Ineffective

There is no question here that Respondent was read his rights and that he appeared to waive them. [44/] However, as this Court held -- 28 years before Miranda v. Arizona -- every reasonable presumption will be indulged against the waiver of constitutional rights. Johnson v. Zerbst, 304 U.S. 458, 464 (1938) [45/] Moreover, even the fact that Respondent signed a written waiver is not dispositive. North Carolina v. Butler, 441 U.S. 369 (1979). The ultimate question here -- answered affirmatively by both the trial court closest to the facts and the Colorado Supreme Court on appeal -- is whether Respondent's mental

---

[44/] See Tr. 10, (Testimony of Officer Anderson), RBO, at 2.

[45/] In addition, Johnson v. Zerbst, 304 U.S. above at 464, held that "intelligent" and therefore "valid" waivers depended on the particular circumstances of the case "including the background experience and conduct of the accused."

condition rendered his spoken and written waivers ineffective.

Again, as with Respondent's initial statement, the entire record in this matter supports the presumption against an effective waiver. Whether basing the analysis on the psychiatrist's testimony as in the trial court,[46] the public defender investigator[47] the policeman[48] or the state hospital report,[49] the outcome is against waiver. The public defender investigator's testimony, in particular, supports the argument that Respondent's post-Miranda statements do indeed raise the "reliability" issue,

---

[46] Tr. 55 (Testimony of Dr. Metzner)

[47] Tr. 40-43 (Testimony of Ms. Lindecrantz)

[48] Tr. 10, 12 (Testimony of Officer Anderson), Tr. 35 (Testimony of Detective Antuna)

[49] Report, at 4-6

just as does his initial statement.[50/]

It is clear that the Respondent's compulsion to confess was overwhelming and that neither the Miranda warnings nor any other "real world" considerations could have discouraged him, as both the State and the Solicitor General concede. See, SB at 34 and USSG Brief at 30. That the Respondent's severe mental condition -- rather than some less pathological

---

50/ See, e.g., Tr. 42 (Testimony of Ms. Lindecrantz)

> "Everything that we asked him or seemed almost everything we asked he was very agreeable. He would say, yeah, and then we would say, what did we ask you, and he wouldn't know, and I think we all introduced ourselves several times, asked him--we had introduced ourselves at the beginning. We asked him a few minutes later; he didn't know. We asked him if he knew what we were; he didn't know. We asked him if he knew where he was; he didn't know. He didn't know what day it was, what time it was, and we would tell him and then go on with our questions and go back and say, do you know where you are? Do you know who we are, and he didn't."

See Point III A.1. above regarding the issues of suggestibility and reliability.

sense of guilt[51] -- clearly "caused" his singleminded fixation on divulgence is

[51] Recently, Chief Justice Burger commented on this motivational force:

> At times, it seems, the judicial mind is in conflict with what behavioral--and theological--specialists have long recognized as a natural human urge of people to confess wrongdoing. See, e.g., T. Reik, The Compulsion to Confess, (1959).

Michigan v. Jackson, 54 U.S.L.W. 4334 (U.S. April 1, 1986) (No. 84-1531) (Burger, C. J. dissenting at 4313)

However, even Reik, in his cited work, acknowledges the power of the forces acting on the compulsion:

> According to the psychoanalytic view, certain mechanisms of projection exist, especially in the most serious crimes. The criminal flees from his own conscience as he would from an external enemy; he projects this internal adversary outwards. Under this pressure, his weakening ego fights in vain and he becomes careless and betrays himself. When the internal forces become unbearable, he flees to the external ones, probably because it is a mental relief to do so--a relief which is in many cases greater than his fear of punishment. In studying the psychogenesis of conscience as Freud has described it, we understand why the external forces are so much less formidable than the mental ones. The Erinyes who pursue Orestes are reincarnations of his murdered mother: from these visible but intangible beings he flees to earthly justice and suffers its punishment because it is more merciful than that terror.

Reik, above, at 58-9 (emphasis added)

conclusive on the issue of his understanding and freedom to respond rationally to his Miranda warnings.52/

52/ The issue here -- resolved correctly by the state courts in this case -- was whether Respondent's compulsion was the product of his illness rather than his guilt. This distinction was noted as soon as Miranda was decided:

> For example, the studies of some psychologists suggest that many suspects may have an uncontrollable urge to admit guilt. If this "compulsion to confess" is considered irrational, it might be thought unfair to question such people. Yet such a phenomenon closely resembles the product of a guilt-stricken conscience, and it would be strange if it were constitutionally impermissible for the police to take advantage of the latter motivation. It may often be virtually impossible for a court to distinguish the promptings of conscience from the pressures of morbid guilt feelings in passing on the admissibility of a confession. Thus it could be argued that, once it is clear that the suspect's incompetence is not so great as to create serious doubts about the reliability of his confession, his mental defects should not be considered in deciding whether the police can question him, but should bear solely on his ultimate treatment. Developments, above, at 976-977 (emphasis added) Here, (as noted above regarding his initial statement at Point III A.2.) the state courts decided Respondent's incompetence was in fact "so great" regarding his Miranda waiver as well.

Thus, the court's finding on the issue of Respondent's "incompetency" to waive his Miranda rights is readily comparable to the treatment of an accused's incompetency to proceed to trial, to plead and to be punished.[53/]

[53/] See, e.g., Dusky v. United States, 362 U.S. 402, 403 (1960) ("We agree with the suggestion of the Solicitor General that it is not enough for the district judge to find that 'the defendant [is] oriented to time and place and [has] some recollection of events,' but that the 'test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether he has a rational as well as factual understanding of the proceedings against him.'") See also, Sadoff, "Forensic Psychiatry" in C. Wecht, ed. Forensic Sciences 32.02(a), 3-9 (1985) ("Active hallucinations, or delusions as symptoms of a major mental illness, may preclude a defendant's competency to proceed.") Recently, regarding the oral argument before this Court in Ford v. Wainwright, above, the "editorial summary" in U.S. Law Week noted these remarks made in the context of the issue of competency to be executed as it was being argued in that case:

> "Justice Rehnquist: Isn't it true that the only thing that separates competency from incompetency is the person's ability to come to terms with God?"
> 54 U.S.L.W. 3723, May 6, 1986.

Here, too, the Respondent was trying -- unsuccessfully it appears -- to come to terms with God regarding his perception of the divine mandate. See, e.g., Report, at 5,6.

As already noted, the issue of the effects of Respondent's mental condition on the effectiveness of his waiver is merely one small part of this Court's jurisprudence on the impact of such serious mental conditions on the various stages of criminal proceedings generally. See Point III A.1. above. It is difficult to credit the argument that in this case the whole structure of these carefully developed and interlocking principles should be ignored in favor of a particular "just" outcome, no matter how forced.[54/]

[54/] This case -- and some of the briefs -- raise the issue of which psychological theory or approach best suits the legal analysis regarding the effects of mental conditions on confessions and Miranda waivers. See, e.g., APA Brief at 25 ("As noted...behavioral science does not use or rely upon the concepts of 'volition' or 'free will'." Accordingly, Dr. Metzner was not testifying as a scientist when he testified that respondent's command hallucinations impaired his 'volitional' capacity.") This Court is well aware of the differing views and interests of the competing approaches of psychology and psychiatry. See, e.g., McCready v. Blue Shield of Virginia 457 U.S. 465 (1982). There can also be little argument

(Footnote continued)

This Court has already faced a similar problem in Brewer v. Williams, 430 U.S. 387, 395 (1977), where one issue was whether an escaped mental patient's

---

about the Court's awareness of the shortcomings of both disciplines. See, e.g., Estelle v. Smith, 451 U.S. 454, 472 (1981) (psychiatric predictions of dangerousness) See also, O'Connor v. Donaldson, 422 U.S. 563, 575 (1975); Addington v. Texas, 441 U.S. 418, 430 (1979); Vitek v. Jones; 445 U.S. 480, 495 (1980); Parham v. J.R., 442 U.S. 609 (1979) and Ake v. Oklahoma, 105 S.Ct. 1087, 1096 (1985) The existence of many alternative psychological schools--other than the "behaviorist" orientation of the APA Brief--is also as great a source of widely divergent views as are the different approaches in psychiatry. Compare, Stein, Contemporary Psychotherapies, (1961) with Frank, Persuasion and Healing, (1973). In any event, the APA's arguments should have been made by a prosecution expert at trial. Even then there is still some question as to their impact. See, e.g., Grano at 789:

> No less than the law of contracts or wills, the law of confessions says, albeit imperfectly, that an individual's choice can affect the legal outcome, provided that choice is free from significant impairment. The public generally understands and approves of the law of free choice, and we cannot eliminate this human sentiment simply by asserting the truth of determinism. (emphasis added)

Here, Respondent's mental condition clearly resulted in a "significant impairment" of his ability to choose freely, as the Colorado courts properly found.

"self-incriminatory statements on the automobile trip from Davenport to Des Moines had been involuntarily made."[54a/] The fact that there the police were also aware of the accused's background and vulnerability was as well-documented as it is here:

> "Q. In fact, Captain, whether he was a mental patient or not, you were trying to get all the information you could before he got to his lawyer, weren't you?"
>
> "A. I was sure hoping to find out where the little girl was, yes, sir."

430 U.S. at 399 (emphasis added)

And further:

> "Moreover, the statements were obtained only after Detective Leaming's use of psychology on a person whom he knew to be deeply religious and an escapee from a mental hospital -- with the specific intent to elicit incriminating statements."

430 U.S. at 402-3 (emphasis added)

In his concurring opinion, Justice

54a/ See also, Kamisar, at 113 ("Brewer v. Williams -- A Hard Look at a Discomfiting Record")

Stevens set out the reasoning in that case which now seems so apt here:

> Nothing that we write, no matter how well reasoned or forcefully expressed, can bring back the victim of this tragedy or undo the consequences of the official neglect which led to the respondent's escape from a state mental institution. The emotional aspects of the case make it difficult to decide dispassionately, but do not qualify our obligation to apply the law with an eye to the future as well as with concern for the result in the particular case before us.

430 U.S. at 415 (Stevens, J. concurring) (emphasis added)

In Brewer, this Court acted to protect the "underlying" issue -- the accused's Sixth Amendment rights against a claimed effective waiver by implication. Id. Here, the claimed waiver arising from a disabling mental condition is the issue "underlying the surface issues of this case." Id. Sadly, here too, nothing can bring back Marry Anne Junta. The result in this case, however, will surely affect the path of the law on these issues in the future.

CONCLUSION

For the reasons stated in this brief, amicus curiae, respectfully urge this Court to affirm the decision of Colorado Supreme Court in this case.

Respectfully submitted,

Michael L. Perlin *
Director, Federal
Litigation Clinic
PETER MARGULIES
Managing Attorney, Federal
Litigation Clinic
New York Law School
57 Worth Street
New York, N.Y. 10013
(212) 431-2183

*Counsel of Record

Counsel also wishes to
acknowledge the assistance
on the brief of
Julie Heitmann,
Minda Maisel and
George Mulgrew, law clerks.